

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

3 UNITED STATES OF AMERICA

4 v. 04 Cr. 119 (AKH)

5 ALYSHA LOPAC, Conference
6 Defendant.

7 -----x

8 New York, N.Y.
9 October 1, 2013
10 2:40 p.m.

Before:

11 HON. ALVIN K. HELLERSTEIN

12 District Judge

13 APPEARANCES

14 PREET BHARARA
15 United States Attorney for the
16 Southern District of New York

17 NEGAR TEKEEI
18 Assistant United States Attorney

19 FEDERAL DEFENDANTS OF NEW YORK, INC.

20 Attorneys for Defendant
21 BY: PHILIP L. WEINSTEIN

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1 (Case called)

2 THE COURT: We are sentencing Alysha Lopac.

3 MS. TEKEEI: Good afternoon, your Honor. Negar Tekeei
4 for the government.

5 THE COURT: Good afternoon, Ms. Tekeei.

6 MR. WEINSTEIN: Phil Weinstein for Ms. Lopac.

7 THE COURT: Mr. Weinstein, hello again. How are you,
8 Ms. Lopac?

9 THE DEFENDANT: I'm fine, thank you.

10 THE COURT: Ms. Lopac, have you reviewed the
11 pre-sentence investigative report?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: Have you discussed it with Mr. Weinstein?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: Mr. Weinstein, are there any factual
16 errors to report to me?

17 THE DEFENDANT: No. But still the opening question is
18 a minor role, your Honor, that was part of the plea agreement.

19 THE COURT: I'll get to the sentencing guidelines in a
20 few minutes.

21 MR. WEINSTEIN: That is the only issue.

22 THE COURT: Does the government have any comments on
23 the facts?

24 MS. TEKEEI: No, your Honor.

25 THE COURT: I understand the facts as set out in the

1 pre-sentence investigative report. Mr. Weinstein, let me set
2 the tone. The first step in sentencing is to analyze the
3 guidelines and their application. The crime to which Ms. Lopac
4 pleaded is possession with intent to sell marijuana and a
5 conspiracy to distribute marijuana, those two.

6 The background is much more complicated. There was a
7 trial before me, a multidefendant case involved in the
8 distribution of marijuana involving interstate and I think
9 foreign shipments, I'm not clear on foreign shipments, with
10 incidents in the west side of Manhattan, where Ms. Lopac lived,
11 and in Brooklyn.

12 After trial I held that there should be a new trial
13 with regard to Ms. Lopac. If my memory is correct, in the
14 context of the new trial Ms. Lopac pleaded guilty. I accepted
15 the plea on April 4, 2006. Am I correct basically, Mr.
16 Weinstein?

17 MR. WEINSTEIN: Yes, your Honor. Just to fill it out
18 a little, originally she was acquitted of a (b) (1) (A),
19 convicted of a (b) (1) (B) felony. The Court set aside the
20 (b) (1) (B). She then pled to a (b) (1) (C).

21 THE COURT: Thank you. What is the implication in the
22 mandatory minimum?

23 MR. WEINSTEIN: The (b) (1) (B) had a 5-year mandatory.
24 The (b) (1) (C) has no mandatory.

25 THE COURT: There is no mandatory minimum. Any

1 comments so far, Ms. Tekeei?

2 MS. TEKEEI: No, your Honor.

3 THE COURT: The lower of the guidelines obtaining now
4 or as of November 1, 2004, are the ones we use. I don't think
5 there is anything that comes out of that.

6 Her offense level is measured by the guidelines for
7 marijuana in an amount greater than 60 kilograms but fewer than
8 80 kilograms. The offense level is 22. She is entitled to the
9 safety valve under section 5C1.2 and a reduction of 2 under
10 section 2D1.1. I think the government questions that.

11 To the extent that she may be a minor participant,
12 which Mr. Weinstein urges, there is potentially another 2
13 levels that could be reduced. I need to get into a discussion
14 with both of you whether she is entitled to the safety valve or
15 whether she is entitled to a reduction for a minor participant.

16 There is also a question whether she should get a
17 reduction for acceptance of responsibility. There is also a
18 question of whether there should be additions for obstruction
19 of justice and other factors of that nature.

20 Let me do that now. Let's take the issue under
21 section 5C1.2 first. Ms. Tekeei.

22 MS. TEKEEI: Yes, your Honor. We believe that the
23 defendant appears to meet the criteria under that section.

24 THE COURT: Could you please speak louder.

25 MS. TEKEEI: Yes, your Honor. We believe that the

1 defendant meets the criteria under that section.

2 THE COURT: She did not have more than one criminal
3 history point at the time. There was no involvement by the
4 defendant in violence or threats of violence. There was no
5 firearm that she possessed. Others in the conspiratorial ring
6 did possess a firearm, but there is no evidence that Ms. Lopac
7 was involved in the Brooklyn aspects of the conspiracy to the
8 extent that imputation of knowledge should exist to her.

9 There is nothing having to do with death or bodily
10 jury to anyone. She was not an organizer, manager, leader, or
11 supervisor by any stretch of the imagination. What is
12 the fact about truthfully providing up to this time to the
13 government all information and evidence that she has concerning
14 the offense or offenses that were part of the course of conduct
15 to which she pleaded guilty, Mr. Tekeei?

16 MS. TEKEEI: Your Honor, we believe that, as I said
17 earlier, she meets every subsection of the criteria for this
18 provision. Perhaps Mr. Weinstein can answer any more specifics
19 about the information that she provided.

20 THE COURT: Mr. Weinstein.

21 MR. WEINSTEIN: Your Honor, if the Court recalls from
22 the trial, there were a series of proffer meetings with the
23 government.

24 THE COURT: I didn't recall that, Mr. Weinstein.
25 Thank you for refreshing my recollection.

1 MR. WEINSTEIN: She fully proffered before trial. The
2 government wanted her as a cooperator. The issue was whether
3 she knew some of the packages she was receiving contained
4 marijuana.

5 THE COURT: What did she say?

6 MR. WEINSTEIN: She said she didn't. The government
7 had Everton Powell, who at the time was her boyfriend, testify
8 as a cooperating witness at trial. He testified as a
9 government witness, or at least on my cross, that he
10 manipulated her, she was in love with him, he got her to do it,
11 he never paid her a penny, and, his words, she didn't know that
12 the boxes contained marijuana. The jury didn't believe him.

13 THE COURT: My understanding at the time, Mr.
14 Weinstein, was that she was probably consciously indifferent to
15 what the packages contained.

16 MR. WEINSTEIN: It may be true that the jury
17 disbelieved that and convicted on a conscious avoidance. But
18 the issue in terms of --

19 THE COURT: You can't say that she didn't come forward
20 and tell what she knew.

21 MR. WEINSTEIN: Right.

22 THE COURT: She was candid in that which she did. She
23 may not have been candid about the frame of mind that she had.

24 I will find that she qualifies for the safety valve.

25 The next issue is whether she is entitled to a role as

1 a minor participant. Ms. Tekeei.

2 MS. TEKEEI: Yes, your Honor. We believe that she is
3 entitled to a role as a minor participant and we have
4 stipulated to that as set forth in the plea agreement.

5 THE COURT: I had taken the position before the
6 sentencing guidelines became advisory that people involved in
7 the business of distribution need not be fully involved in the
8 conspiracy to be an important part of the conspiracy. She was
9 the person that was used to pick up drugs and distribute the
10 drugs. I can't say that she is a minor participant.

11 MR. WEINSTEIN: Your Honor, she picked up packages. I
12 don't think there was any evidence that she in fact distributed
13 drugs.

14 THE COURT: It was part of what she did. The packages
15 were being received from other places, being mailed to other
16 places, as I recall. She knew that the people that she was
17 involved with were involved with drugs. This is a way of
18 getting drugs. There is no reason why she should be used to
19 pick up these drugs. I feel that she was enough involved to
20 qualify as something more than a minor participant.

21 MR. WEINSTEIN: But it is also true, your Honor, that
22 it is rare that somebody is part of a drug conspiracy where
23 they not only aren't paid anything, which she was not, but in
24 fact had loaned Everton Powell \$1500, never paid back, paid off
25 his credit card bill. So rather than earning money, she was

1 actually spending it for her boyfriend.

2 THE COURT: She was enough to be guilty.

3 MR. WEINSTEIN: Yes, but that doesn't go to minor
4 role.

5 THE COURT: What did she tell me on the allocution, do
6 you remember?

7 MR. WEINSTEIN: I don't have the allocution here. But
8 people in conspiracy are guilty of the conspiracy and still get
9 minor roles.

10 THE COURT: That's true. But in order to be guilty of
11 the conspiracy, she had to know that she was picking up drugs.

12 MR. WEINSTEIN: I think this was a conscious avoidance
13 plea. I remember, and I don't have it in front of me, there
14 was a legal issue, and I discussed it with the U.S. Attorney at
15 the time, of whether or not they would accept a conscious
16 avoidance plea. I believe that is what it was in this case.
17 But I haven't looked at the transcript. It's six years ago.

18 THE COURT: I am not able to determine that she was a
19 minor participant. She may have been motivated by love, but
20 she was on facts that made her aware of what she was picking up
21 and bringing to the Federal Express offices. I can't say that
22 the activities that she performed were not important to the
23 ongoing success of the conspiracy or the substantive crime
24 itself. I decline to find that she was a minor participant.

25 Should there be an upward adjustment for obstruction

1 of justice and for her becoming a fugitive? Ms. Tekeli.

2 MS. TEKEEI: Your Honor, as stated in our sentencing
3 submission, we are not seeking an adjustment based on
4 obstruction of justice.

5 THE COURT: There was one before, wasn't there?

6 MS. TEKEEI: I believe the probation department did
7 recommend an enhancement for obstruction of justice based on
8 information that the defendant provided to probation. This is
9 prior in 2006, prior to their initial report.

10 THE COURT: Do you remember what it was?

11 MS. TEKEEI: The information, my understanding is it
12 was health records that she provided to probation that were not
13 real.

14 MR. WEINSTEIN: Your Honor, I know the assistant
15 wasn't there, it was provided to pretrial, although it is the
16 same instance, that she missed a meeting and she said she was
17 at the doctor's, which was not true.

18 THE COURT: In any event, she should be given
19 obstruction for not appearing in court at the proper time. I
20 was ready to sentence her at the time. I think she was in
21 pretty good shape to ask for lenient treatment. Had you made
22 your customarily effective argument, Mr. Weinstein, you might
23 have persuaded me, probably would have persuaded me.

24 But things changed when she decided, for whatever
25 reason -- there may have been some good reasons, some bad

1 reasons -- to become a fugitive. Without telling anyone, she
2 just disappeared and had to be flushed out of Canada. I think
3 that qualifies for obstruction of justice. I so find. Which
4 means we add 2 levels. Now we are back to 22.

5 Should there be an acceptance of responsibility?

6 MR. WEINSTEIN: I think, your Honor, and again the
7 prosecutor wasn't here, part of the negotiations was that there
8 wasn't going to be.

9 THE COURT: There was not going to be?

10 MR. WEINSTEIN: Was not going to be because of the
11 minor role and the other things. Those were negotiated over,
12 and that was the government's position and it was acceptable to
13 us, when we negotiated the guidelines. We had agreed that
14 there would not be acceptance in exchange for the other
15 adjustments.

16 THE COURT: She would be entitled to acceptance of
17 responsibility. I can't say I would give her the additional
18 point, because we had to go through a trial, though she did
19 save the government expenses of a retrial. I think I would
20 give her 2 points for it.

21 How the becoming a fugitive set of facts affects that
22 acceptance of responsibility is something that would definitely
23 counter. One could argue that by becoming a fugitive, she did
24 the contrary of accepting responsibility. But she explains
25 that her mother was ill, that there was no one to care for her

1 mother, and she felt she owed a very large debt of gratitude to
2 her mother for standing by Ms. Lopac during very troublesome
3 times.

4 I'm going to give her 2 levels. It nets out to be the
5 same. So we are at 20.

6 I calculated correctly, Ms. Tekeei?

7 MS. TEKEEI: Yes, your Honor.

8 THE COURT: Mr. Weinstein?

9 MR. WEINSTEIN: Yes.

10 THE COURT: At level 20. The criminal history points
11 are zero, right?

12 MR. WEINSTEIN: Right, yes.

13 THE COURT: She has no record. That puts her in
14 criminal history category I. The spread of custodial
15 punishment is 33 to 41 months followed by 3 years to life
16 supervised release. Is that right?

17 MR. WEINSTEIN: I'll not sure. I'd have to look it
18 up.

19 THE COURT: I'm not going to give her more than 3
20 years. Let's say 3 years is the maximum. I won't give her
21 more than that. I find that the range of custodial punishment
22 for net offense level 20 is between 33 and 41 months followed
23 by 2 to 3 years of supervised release. Is there any objection
24 to that?

25 MR. WEINSTEIN: No. As the guideline calculation, no.

1 THE COURT: Ms. Tekeli?

2 MS. TEKEEI: No, your Honor.

3 THE COURT: Now we have to go into the question of
4 3553 punishment to find the just punishment for Ms. Lopac. I
5 take note that she was detained between December 1, 2003, and
6 December 3, 2003, let's say three days. She was detained again
7 from July 11, 2013 to today, or almost 3 months. Let's say
8 that she has 3 months and 3 days of prior detention. Actually
9 a little less than 3 months. Let's round it at 3 months.

10 MR. WEINSTEIN: Your Honor, if you are still doing the
11 detention time, there is something I would add to that.

12 THE COURT: Yes.

13 MR. WEINSTEIN: She was arrested in Canada, where she
14 spent 7½ months awaiting extradition, which she consented to.
15 My understanding is she is not entitled to credit for that
16 time. Although there may be discretion at BOP to provide it,
17 it also comes within the Court's ability to take that into
18 account.

19 THE COURT: I am not going to exercise discretion on
20 her behalf with regard to those 7½ months. They are incident
21 to her being a fugitive. I don't think she is entitled to it,
22 either by law or by grace. But she is entitled to 3 months.

23 Mr. Weinstein, I will hear you.

24 MR. WEINSTEIN: I think there are a number of factors,
25 as the Court obviously knows, and I won't go through them by

1 name, on 3553. What we can say is in terms of specific
2 deterrence, and I understand she is a fugitive, but there were
3 no arrests or no crimes for over 7 years while she was living
4 in Canada, which certainly is a factor to take into account.

5 Second, and I'll let her speak to this in more detail,
6 during the time where she was in Canada she was taking care of
7 her mother. That has been corroborated by the medical records.
8 What that entailed obviously is not in the records. Ms. Lopac
9 can speak to that. I think it would be fair to say that it was
10 pretty difficult doing what she was doing given the kind of
11 mental illness had mother had. This was not just taking her to
12 the doctor.

13 THE COURT: Had this all been put before me, she would
14 have been in line for a minimal sentence with a very cogent
15 argument about how important her presence in Toronto it would
16 have been. What she did was just take it on herself to flee.
17 She didn't say anything to you, she didn't tell you anything,
18 didn't ask your advice. She just left.

19 MR. WEINSTEIN: True.

20 THE COURT: Pretty much forfeiting any familial
21 appeal. What is to say this is the same bad judgment that
22 caused her to be a prostitute and a dancer at the various men's
23 clubs and to be involved with a marijuana ring. She is not a
24 stupid person. She could employ her skills in different ways,
25 yet she didn't. There is a success of judgments that are

1 indifferent to law.

2 MR. WEINSTEIN: She clearly exercised bad judgment,
3 there is no disputing that. That alone would not be a crime.
4 Plenty of people do that. It is also important to know that
5 her bad judgment was then manipulated by Everton Powell, who
6 the Court sentenced to 40 months even though he is facing a
7 mandatory 15 years. He was the leader of this. He had a gun.

8 THE COURT: He also was a cooperator.

9 MR. WEINSTEIN: He was a cooperator, I understand
10 that. But in terms of the kind of comparative sentence, what
11 they did and what Powell told the Court or told the jury in
12 front of the Court, where he acknowledged that, I think that is
13 a factor to take into account.

14 The Court is clearly left with issues of general
15 deterrence and punishment and all the rest. I think that the 7
16 years she spent in Canada were fairly difficult years in light
17 of her mother's condition. Again, I understand that it had
18 gotten worse, by the way, but that is not the sole criteria,
19 over the 7 years. Her mother did deteriorate.

20 So she wasn't just living high on the hog during those
21 7 years. She had some pretty difficult times extricating her
22 mother from fairly trying circumstances given that when her
23 mother was manic, she would get herself into a lot of trouble.

24 THE COURT: Your letter has pointed some of that out.

25 MR. WEINSTEIN: Yes, I will, because I'm only doing it

1 second-hand and she can do it first-hand. Nevertheless, I
2 think it is a mitigating factor. For 7 years, there is such a
3 thing as post-offense rehabilitation. I understand that she is
4 a fugitive, so it is not an exact fit. But certainly her
5 behavior, there was no other drugs, she has not even been
6 arrested in the 7 years that she was out. Had she been, there
7 was a warrant out for her, and they probably would have
8 exercised it. So it was not only probation and no one else
9 could find the warrant, and it just makes sense that it wasn't.

10 THE COURT: Tell me about this warrant, what you just
11 said about a warrant.

12 MR. WEINSTEIN: When she left the court, a fugitive
13 warrant was lodged against her.

14 THE COURT: Right.

15 MR. WEINSTEIN: She is a dual citizen. The places
16 they are looking her certainly included Canada, which is she
17 was. She was in Toronto the whole time. That is the warrant
18 I'm talking about, as a result of her fleeing from sentence.

19 THE COURT: Right.

20 MR. WEINSTEIN: It was out on Interpol. Had she been
21 arrested even for a traffic offense, I'm going to guess that it
22 would have popped up in the Canadian system. I will let her
23 explain, because I think she has more to say about the care of
24 her mother. I will let the Court hear her words on that.

25 THE COURT: Thank you, Mr. Weinstein.

1 Ms. Lopac.

2 THE DEFENDANT: When my mom is manic, she is really
3 wild. She runs around and does all kinds of crazy stuff. I
4 have to follow her around and make sure she doesn't get into
5 trouble.

6 THE COURT: Would you push microphone a little closer.

7 MR. WEINSTEIN: If she could sit down, it may be a
8 little easier.

9 THE COURT: OK.

10 MR. WEINSTEIN: She is either manic or depressed.
11 When she is depressed, she stays inside the house, she doesn't
12 bathe, she doesn't clean, she doesn't do anything, she doesn't
13 go anywhere, she doesn't talk to anybody. Then, when she gets
14 manic, all of a sudden she is out and talking to everybody and
15 acting crazy and driving around.

16 We live in an area where there is a gay neighborhood
17 on one side and drugs on the other. She will drive around the
18 park in her scooter with her flashlight running up to all the
19 drug users: What are you doing? selling crack. I'm going to
20 call the cops on you. Stuff like that. Make comments,
21 especially the ones in our building, our neighbors. She causes
22 trouble. I basically have to follow her around.

23 When she is getting too crazy with somebody, if he
24 wants to hurt her, I have to jump out like Superwoman and say,
25 hey, she is not right right now, she is off her medication, she

1 doesn't mean what she is saying.

2 I hope they don't do anything to her. I try to get
3 her to the hospital. She will come with me. Mom, you're
4 obviously not OK, let's go to the hospital. Then she just
5 knows all the right things to say to get herself out. Are you
6 feeling like this, are you feeling like that? She says all the
7 right things, and they don't keep her in there.

8 I have to wait until she can get they call it formed,
9 where they can actually hold her against her will in the
10 hospital. But she has to threaten to hurt herself or somebody
11 else before that happens. It's just a matter of like whenever
12 the police do get involved or just whatever she does.

13 She will run around with no clothes on or two
14 different shoes, making friends. She is a member of a club
15 called Progress Place that is for people like her. She called
16 in a bomb threat there. She threatened to stab somebody there.
17 She just is not herself.

18 Then, when she snaps out of it or whenever she gets
19 into the hospital, does her time there, and gets her meds and
20 has all the levels right, she comes home. Then nobody wants to
21 talk to her because of all the crazy stuff she did while she
22 was manic. Then she gets depressed again, having no friends,
23 nobody likes me, nobody's talking to me. She is too
24 embarrassed to go anywhere.

25 THE COURT: That is happening now?

1 THE DEFENDANT: She is OK right now. It usually
2 happens every like three or four years. That is exactly what
3 was happening when I left. Then it happened three years after.
4 Then she had a heart attack.

5 THE COURT: She what?

6 THE DEFENDANT: She had a heart attack two years,
7 maybe three years ago. Now it's due again. I know it's
8 coming.

9 THE COURT: What's due with her now?

10 THE DEFENDANT: Pardon me?

11 THE COURT: What is happening with her now?

12 THE DEFENDANT: Right now she is on her medication,
13 everything's OK for now. All my life it happens every three or
14 four years this happens.

15 THE COURT: You were with her how long, how many
16 years?

17 THE DEFENDANT: My whole life.

18 THE COURT: You became a fugitive when?

19 THE DEFENDANT: In September.

20 THE COURT: Of what year?

21 THE DEFENDANT: '06.

22 THE COURT: You came back 6½ years later.

23 THE DEFENDANT: Yes. It never changes.

24 THE COURT: What happened in the 6½ years? Were you
25 living with her all the time?

1 THE DEFENDANT: I saw her almost every day, yes. She
2 was in a hospital a few more times for her illness, and then
3 she was also in for a heart attack.

4 THE COURT: What is going to happen if I put you in
5 jail now?

6 THE DEFENDANT: I don't know.

7 THE COURT: What's happened in the 3 months that you
8 have been in jail or the 10 months that you have been in jail,
9 counting Canada?

10 THE DEFENDANT: She's been making it to her
11 appointments. She is OK. She takes her meds. But eventually
12 she gets -- sort of like if you take sleeping pills, they work
13 for a few weeks, and then after that they don't work anymore.
14 That's what happens with her meds. They always have to find
15 her something else or change her levels or whatever. It
16 happens every three or four years.

17 THE COURT: Does she know that you are in jail?

18 THE DEFENDANT: Yes, she does. I talk to her like
19 three or four times a day.

20 THE COURT: How do you think I should take this into
21 account, your experience with your mother?

22 THE DEFENDANT: I've been dealing with it my whole
23 life. It just happened at the wrong time.

24 THE COURT: Do you have any sisters?

25 THE DEFENDANT: No.

1 THE COURT: Brothers?

2 THE DEFENDANT: No.

3 THE COURT: You are the only one?

4 THE DEFENDANT: Yes.

5 THE COURT: How old is your mom?

6 THE DEFENDANT: 64.

7 THE COURT: How old are you?

8 THE DEFENDANT: 42.

9 THE COURT: Do you feel you are ever going to have a
10 life for yourself?

11 THE DEFENDANT: No. But I don't care.

12 THE COURT: Why? Why don't you care?

13 THE DEFENDANT: Because she is my mom. It's my job to
14 take care of her.

15 THE COURT: You can't take care of her unless you take
16 care of yourself. You can't help another person unless you
17 help yourself first.

18 THE DEFENDANT: I understand, yes.

19 THE COURT: That's right, isn't it?

20 THE DEFENDANT: Yes.

21 THE COURT: You can't take care of your mom if you're
22 involved with a drug ring in New York City, right?

23 THE DEFENDANT: Yes.

24 THE COURT: You can't have much of a life to yourself
25 if you engage in prostitution.

1 THE DEFENDANT: I didn't get to finish school.

2 THE COURT: What?

3 THE DEFENDANT: I didn't get to finish school, because
4 of things going on with my mom.

5 THE COURT: Lots of people are able to manage even
6 though they haven't gone to school.

7 THE DEFENDANT: Yes.

8 THE COURT: Lots of people who never go to school at a
9 later time than others and get their degrees later.

10 THE DEFENDANT: Absolutely. I have had jobs, I have
11 had good jobs before all this other stuff.

12 THE COURT: You are a capable and caring person when
13 you want to be, Ms. Lopac.

14 THE DEFENDANT: Absolutely. But even the few jobs
15 that I had I couldn't go back to because of my mom's illness.
16 I am not trying to blame my mom. It's not her fault. It's
17 just all these things lead up to everything screwing up and
18 nobody's ever going to say no. They are not going to fire a
19 stripper or prostitute. I can get fired from many places, but
20 those places will never fire you.

21 THE COURT: Those places what?

22 THE DEFENDANT: You can't get fired from being a
23 stripper or prostitute. I have worked for several places and
24 always had to leave to take care of my mom. These ones I don't
25 have anybody to answer to. So when my mom's sick, I just don't

1 go to work.

2 THE COURT: I can't straighten out your life.

3 THE DEFENDANT: I know.

4 THE COURT: I can't simplify your life. I have to
5 believe, though, that if you don't do something for yourself,
6 you are not going to be able to do anything for your mother.
7 If you don't do something for yourself that is legal and right,
8 nothing else will work.

9 THE DEFENDANT: Yes.

10 THE COURT: I wish I could have in a sense an anger
11 with you for having run away from this court, but I don't have
12 it. I wish that judges would have the ability to be fine
13 social workers as well as judges so they can repair broken
14 lives, but I can't do it. I can deliver nice-sounding
15 sentiments which you probably think are totally impractical to
16 the conditions of your life. Yet I believe that if you don't
17 take care of yourself, gain self-respect, do proper, honest,
18 lawful things, you are neither going to be able to take care of
19 yourself or your mother.

20 Bottom line, everybody has to make the best choice he
21 or she can for oneself. The best choice is not a choice that
22 engages in narcotics or hangs around with people engaged in
23 narcotics or engages in prostitution or strip joints or
24 anything like that. What is convenient and at hand is not
25 necessarily the sensible thing to do.

1 How do I punish you, Ms. Lopac? What do I do to get a
2 just punishment that takes into account the seriousness of what
3 you did, the respect that people have to have for the law, the
4 need to deter yourself from future bad conduct, and to deter
5 others from committing crimes like yours? It's not like adding
6 columns and coming to an answer, because the columns don't
7 match. You're left with nothing but judgment, and not even at
8 the time rational judgment.

9 I have to sentence you. I am not going to go below
10 the guidelines, because I think you spoiled your chances to go
11 below the guidelines. I won't go above the guidelines, either,
12 because by and large I think you are a decent human being who
13 has made a series of really bad judgments. Maybe you think you
14 are not deserving better, but you are. But you have to do
15 better for yourself.

16 THE DEFENDANT: Yes.

17 THE COURT: I am going to give you 38 months. It's
18 not the top, it's not the bottom, but it is substantial.

19 The guidelines are 33 to 41, right, Mr. Weinstein?

20 MR. WEINSTEIN: Yes.

21 THE COURT: I'm giving her 38.

22 It reflects that what you did was serious. Whether
23 you were a minor participant or not a minor participant, the
24 important point is that you involved yourself with a gang of
25 people that were involved in narcotics and you had to know what

1 was going on. It was over an extensive period. I think it was
2 about 50 packages, 50 deliveries that you picked up and visited
3 Federal Express offices. I'm sorry?

4 THE DEFENDANT: I didn't pick up that much. But it
5 doesn't matter at this point, I guess.

6 THE COURT: How many times do you think you did it?

7 THE DEFENDANT: I went two times to Federal Express.

8 THE COURT: Only two times?

9 THE DEFENDANT: Yes.

10 THE COURT: How did I come to 50? That was in the
11 evidence.

12 THE DEFENDANT: It being delivered.

13 THE COURT: To your home?

14 THE DEFENDANT: Yes, our place of business, yes.

15 THE COURT: It was where you lived in the '70s and
16 West End Avenue, as I remember.

17 THE DEFENDANT: I didn't live there. I lived on
18 123rd.

19 THE COURT: You got deliveries at 123rd also.

20 THE DEFENDANT: Yes. He lived at 76th Street.

21 THE COURT: You may have gone twice to the office, but
22 there were countless times that people were delivering stuff to
23 your home and you knew that. Whether you picked them up
24 yourself, they were placed where you lived, and you knew that.

25 THE DEFENDANT: Yes.

1 THE COURT: That's how the number 50 comes up.

2 THE DEFENDANT: Yes.

3 THE COURT: Where shall she be serving her time, Mr.
4 Weinstein? Recommendations?

5 MR. WEINSTEIN: It is women's prison.

6 THE COURT: Which is at the current time Danbury,
7 unless they moved people.

8 MR. WEINSTEIN: I don't think Danbury takes women. I
9 think it's Devon in Massachusetts or West Virginia, the two
10 women's prisons. I think they were going to close the one in
11 Massachusetts and the senators opposed it because the all the
12 New York City women would end up in West Virginia, away from
13 families.

14 THE COURT: Shall I recommend --

15 MR. WEINSTEIN: A Northeast women's prison.

16 THE COURT: I so recommend a Northeast women's prison.
17 Located?

18 MR. WEINSTEIN: I think it is in Massachusetts. I am
19 not a hundred percent sure.

20 THE COURT: I will just leave it at Northeast women's
21 prison. Will she gets visits from Toronto?

22 MR. WEINSTEIN: Yes, hopefully.

23 THE COURT: From her mother?

24 THE DEFENDANT: No. it doesn't matter where I go,
25 really, because my mom won't be coming.

1 MR. WEINSTEIN: She said her mother can't travel.

2 THE COURT: Friends? Who will be visiting you, Ms.
3 Lopac?

4 THE DEFENDANT: Nobody. I don't know anybody in the
5 U.S.

6 THE COURT: The recommendation will stand for a
7 Northeast women's prison. Somewhere there may be friends who
8 will come to see you but won't be able to come if you serve in
9 West Virginia or other points.

10 The 38 months are concurrent on both counts, followed
11 by 3 years of supervised release subject to conditions, also
12 concurrent. The defendant shall not commit another federal,
13 state, or local crime. Defendant shall not illegally possess a
14 controlled substance. Defendant shall not possess a firearm or
15 destructive device. Defendant shall cooperate in the
16 collection of DNA.

17 The 13 standard conditions of supervision are applied.
18 The defendant shall be subject to random drug testing as
19 determined by the probation officer. Defendant shall submit
20 her person, residence, place of business, vehicle or any other
21 premises under her control to the conditions of search as
22 specified in subparagraph 2 on page 36 of the PSR.

23 Defendant is to report to the nearest probation office
24 within 72 hours following release from custody. She will be
25 supervised by the district of her residence. There is a

1 mandatory assessment of \$200 which shall be due upon the filing
2 of this judgment. My opinion is that defendant does not have
3 an ability to pay a fine. Therefore, one is not ordered.

4 MR. WEINSTEIN: My request is that Ms. Lopac is a dual
5 citizen, U.S. and Canada. When she finishes her prison term,
6 she would like to go back to Canada to assist her mother at
7 that stage 3 years from now or whenever it is rather than being
8 supervised in the U.S. She would still be on supervised
9 release. It typically happens in cases where people are
10 deported to the Dominican Republic.

11 THE COURT: If supervised release can be transferred
12 under the jurisdiction of probation departments in or around
13 Toronto --

14 MR. WEINSTEIN: I don't think so. I have never heard
15 of it happening that way, although the time period would
16 continue. She would be on supervised release but she would not
17 be supervised. If she commits another crime or does anything
18 like that, she would. As the Court is aware, the factor here
19 is care of her mother.

20 THE COURT: I would think, Mr. Weinstein, that the
21 Canadian system accommodates probation or something like it the
22 way our system does. If arrangements can be made to transfer
23 jurisdiction to Toronto or to surrender jurisdiction here to be
24 carried out in Toronto, or something else that would be in the
25 interests of justice, an application could be made to me or, if

1 I'm not here, to my successor to achieve that.

2 MR. WEINSTEIN: All right.

3 THE COURT: At this point I don't know where Ms. Lopac
4 will choose to live, and I don't know that she does, either.

5 We will keep the term as I read out.

6 Any comments, Ms. Tekeei?

7 MS. TEKEEI: No, your Honor.

8 THE COURT: Anything else, Mr. Weinstein?

9 MR. WEINSTEIN: Your Honor, I think you have to
10 dismiss.

11 THE COURT: I will in a minute. Anything else?

12 MR. WEINSTEIN: No.

13 THE COURT: The punishment is so ordered.

14 I advise you, Ms. Lopac, that under the Constitution
15 you have a right to appeal. You should discuss with Mr.
16 Weinstein if you wish to appeal. Mr. Weinstein, if you are
17 asked to appeal, I instruct you to do so on a timely basis.

18 Ms. Lopac, if you can't afford a lawyer, a lawyer
19 reason assigned to you to represent you at the expense of the
20 government at every stage of the proceedings. Do you
21 understand?

22 THE DEFENDANT: Yes. Thank you.

23 THE COURT: Any underlying counts?

24 MS. TEKEEI: Your Honor, we would move to dismiss any
25 underlying indictments and open counts.

1 THE COURT: So ordered.

2 Ms. Lopac is in detention now, so she will be
3 remanded. I think we are finished. I wish you well, Ms.
4 Lopac. You have had a tough life.

5 THE DEFENDANT: Thank you very much.

6 THE COURT: I have not made it too much easier for
7 you. But if I can say one thing that will be retained, you've
8 got to find a way to have self-respect and take care of
9 yourself.

10 THE DEFENDANT: Thank you.

11 (Adjourned)

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